

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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**VERIFIED AMENDED
COMPLAINT**

M.L., mother and natural guardian of M.L. and
M.L. Individually,

Case No.:

Plaintiff,

-against-

THE CITY OF NEW YORK & NEW YORK CITY
DEPARTMENT OF EDUCATION,

Defendants.

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PRELIMINARY STATEMENT

1. Plaintiff M.L. is the mother and natural guardian of M.L. as defined by IDEA, 20 U.S.C. § 1401 (23).

2. M.L. is a child with a disability as defined by IDEA, 20 U.S.C. § 1403(3)(A).

3. Defendant(s) classified M.L. as a child with a disability.

4. During the relevant dates referenced herein, the plaintiffs have resided in Brooklyn, New York.

5. The defendants, the City of New York (hereinafter “City”) and the New York City Department of Education (hereinafter “DOE”) are municipal entities duly existing by virtue of the law of the City and State of New York.

6. Defendant DOE is a local education agency as defined by IDEA, 20 U.S.C. § 1401 (19), and as such, is obligated to provide educational and related service programs and services to its students in compliance with the applicable federal and state statutes, regulations and the

United States Constitution, and is subject to the requirements of 20 U.S.C. § 1400 *et seq.* and the regulations thereunder.

7. The within action is brought to recover attorney's fees arising out of special education due process proceedings resolved in favor of the plaintiff by the order of IHO Suzanne Carter (hereinafter "IHO") in impartial hearing case number 179949. The decision was issued on July 7, 2020 and is final and binding on the parties.

8. Plaintiff prevailed in the impartial hearing proceedings in case numbers 179949.

9. The plaintiff is a prevailing party in the above-mentioned due process proceedings and to date, legal fees have not been settled to date by defendants.

10. The within action is brought within the statute of limitations and is timely.

JURISDICTION AND VENUE

11. Jurisdiction is conferred upon this Court by the Individuals with Disabilities in Education Act (IDEA) at 20 U.S.C. §1400 *et. seq.*, and more specifically 20 U.S.C. 1415(i)(2)(A) and 1415 (i)(3)(B).

12. Pursuant to 20 U.S.C. §1391(b) venue is proper in the United States District Court of New York, Eastern District.

STATEMENT OF FACTS

13. Plaintiff brought the due process proceeding under case number 179949 due to the inadequacy of M.L.'s IEPs in the 2016-2017 and 2017-2018 school years. The hearing request dated September 26, 2018 was submitted to the DOE , and, the complaint was later amended on February 12, 2019.

14. After holding the hearing over several dates, the IHO determined in her July 7,

2020 order that M.L. was denied FAPE in the complained of school years. The IHO also determined that appropriate remedies required a number of evaluations and that an IEP Team convene and consider a nonpublic school program for M.L. in reviewing all evaluative data upon the completion of all testing.

AS AND FOR A FIRST CAUSE OF ACTION: ATTORNEYS FEES

15. Following the IHO's decision in case number 179949, the DOE did not appeal the Findings made in favor of the plaintiff.

16. The plaintiff has exhausted all necessary administrative remedies prior to bringing the instant action for attorneys fees.

17. The plaintiff is a prevailing party in the underlying due process proceedings pursuant to 20 U.S.C. §1415(i)(3)(B). Plaintiff obtained favorable results in the underlying due process proceedings that were not occasioned by the defendant City's of DOE's voluntary change of conduct, but rather, was based on the determinations made based on evidence presented during the hearing that resulted in the impartial hearing decision made by the IHO.

18. Plaintiff prevailed in all material respects and received the relief requested in the impartial hearing complaint in case number 179949.

19. As plaintiff is a prevailing party in the underlying due process proceedings which are the subject of the instant litigation, legal fees should be awarded.

20. As set forth herein, Plaintiff is a prevailing party in the underlying due process proceeding under case number 179949.

21. The relief sought and ultimately obtained in the hearing under case number 179949 was substantial for Plaintiff.

22. The attorney rate of Erika L. Hartley, Esq. in the amount of \$400.00 per hour is reasonable.

23. Plaintiff having prevailed in the underlying proceedings hereby demands reasonable attorneys fees and costs pursuant to 20 U.S.C. § 1415(i)(3)(B) for the underlying due process proceedings in case number 179949 and this action.

REQUESTS FOR RELIEF

24. Plaintiff requests that an Order be issued awarding attorneys fees for the costs of prosecuting the underlying due process proceedings and bringing this action seeking legal fees in case number 179949. Plaintiff also seeks reasonable attorneys fees which have or will be incurred in the prosecution of this action pursuant to 20 U.S.C. 1415(i)(2)(A) and 20 USC 1415(i)(3)(B).

Dated: Brooklyn, New York
June 22, 2023

Erika L. Hartley, Esq.

Erika L. Hartley, Esq. (Electronically signed)

LAW OFFICE OF ERIKA L. HARTLEY

Attorney for Plaintiffs

M.L. as m/n/g of M.L. et al.

238 Covert Street, Suite 2

Brooklyn, New York 11207

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To: Hon. Sylvia Hinds-Radix, Corporation Counsel
Office of the Corporation Counsel
Attorneys for Defendants
THE CITY OF NEW YORK & NEW YORK CITY
DEPARTMENT OF EDUCATION
100 Church Street
New York, New York 10007

PLAINTIFF'S VERIFICATION

M.L. as mng of M.L. and M.L. Individually, being duly sworn, deposes and states the following:

1. That I am the plaintiff in this federal court action.
2. I have read the verified complaint and know the contents thereof.
2. The allegations made in the verified complaint are based upon matters of which I have personal knowledge as to their truth, except as to those matters alleged upon information and belief, and as to those matters I believe them to be true.

Dated: *Queens* New York
June *29*, 2023

Marisa Loris

M.L.

Sworn to before me this
29th day of *June* 2023.

Donna Daley

NOTARY PUBLIC

DONNA DALEY
Notary Public, State of New York
NO. 01DA6366338
Qualified in Queens County
Commission Expires October 30, 20*25*

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LAW OFFICE OF ERIKA L. HARTLEY

Attorneys for Plaintiffs

M.L. as m/n/g M.L. & M.L. Individually

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